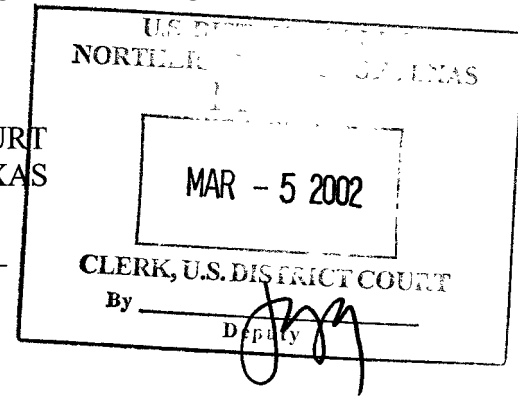


ORIGINAL

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF TEXAS
DALLAS DIVISION



BERNICE E. RAINS and
ANITA HYCHE RAINS,

Plaintiffs,

v.

JANI-KING OF NASHVILLE, INC.,

Defendant.

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Civil No. 3:01-CV-1778-H



ORDER

Before the Court are Plaintiffs' Motion for Partial Judgment on the Pleadings, filed December 20, 2001, Defendant's Response in Opposition, filed January 9, 2002, and Plaintiffs' Reply, filed January 29, 2002.

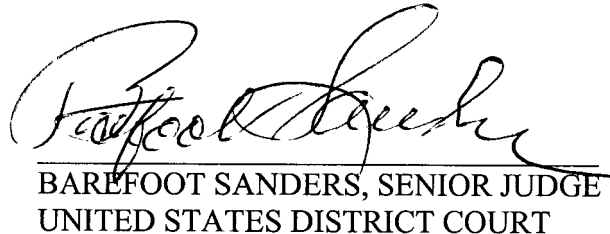
Motions for judgment on the pleadings are generally disfavored. *See U.S. v. General Motors Corp.*, 702 F.Supp. 133, 135 (N.D. Tex. 1988) (Mahon, J.). As plaintiffs are the movants, all well-pleaded factual allegations in the defendant's pleadings are taken as true and all contravening assertions in the plaintiffs' complaint are taken as false. *See id.*; 5A CHARLES ALAN WRIGHT & ARTHUR R. MILLER, FEDERAL PRACTICE AND PROCEDURE § 1368, at 517-20, 525-28. In order to prevail on their motion for judgment on the pleadings, the plaintiffs must demonstrate that the pleadings raise no material question of fact and that they are entitled to judgment as a matter of law. *See id.*

After reviewing the parties' pleadings, plaintiffs have not met the high burden imposed by FED. R. CIV. P. 12(c). The plaintiffs' motion seeks adjudication of a conflict of laws issue and

certain affirmative defenses raised by the defendant. However, the pleadings do not demonstrate that the plaintiffs are entitled to judgment as a matter of law on these issues. Instead, the pleadings reveal a conflict that is properly resolved by evidence. The Court notes that discovery in this case does not close until April 22, 2002. *See* Scheduling Order, filed November 20, 2001. As such, plaintiffs' motion is premature. Therefore, after due consideration, plaintiffs' Motion for Partial Judgment on the Pleadings is **DENIED**.

SO ORDERED.

DATED: March 5, 2002.



BAREFOOT SANDERS, SENIOR JUDGE
UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF TEXAS